

Your right to paid holidays

Employment Rights Advice Leaflet

Number 2/ November 2002

Since 1 October 1998 almost all workers have had a legal right to paid holiday as a result of the Working Time Regulations. The current entitlement is to a minimum of 4 weeks paid holiday.

The new statutory rights to paid holiday are minimum rights and, wherever possible, you should try to negotiate for more.

There is no longer any qualifying period for acquiring the right to statutory paid holiday. Until 25th October 2001 it was necessary to have worked continuously for a period of 13 weeks.

For those starting work after 25th October 2001, the amount of holiday which may be taken during their first year of employment builds up monthly in advance, at the rate of one-twelfth of the annual entitlement each month.

Who is entitled under the Working Time Regulations?

Subject to the exceptions listed below, all workers, including agency workers, have the right to paid holiday. The right applies to part-time and casual workers as well as full-timers, and it applies whether or not you have a written contract of employment.

Who is not entitled?

The main categories of workers who are *not* at present entitled to paid holiday are:

- workers employed in the transport sector: air, rail, road, sea, inland waterway and lake transport; sea fishing; other work at sea;
- Doctors in training.

N.B. The government is due to introduce new legislation in future, to comply with the European Horizontal Amending Directive, which will extend holiday rights to the above sectors. The deadline for doing this is 1st August 2003 for transport workers; and 1st August 2004 for junior doctors.

What is the entitlement?

A worker is entitled to 4 weeks' paid holiday in each holiday year.

The amount of a week's holiday is calculated "pro rata", according to the hours which a worker would normally work in a week. For example, a part-timer working 10 hours a week is entitled to $4 \times 10 = 40$ hours paid leave per year - this allows them to be away from work for four weeks in total.

When can holidays be taken?

Your holiday entitlement must be taken in the relevant holiday year.

A holiday year (or "leave year") is a period of 12 months used by an employer to calculate how much holiday is due. Often the holiday year will be the same as a calendar year, but it can be for an alternative period, such as from April till March.

The holiday year may be fixed in a written document such as your contract or statement of terms and conditions. If there is no written agreement, then under the Working Time Regulations the holiday year starts:

- on 1st October, if your employment began on or before 1 October 1998.
- if you started after 1st October 1998, on the anniversary of the date on which you started work.

Leave must be taken as time off. Under the statutory scheme Holidays may not be replaced by a payment in lieu, except where your employment is terminated. Under the statutory scheme you also cannot carry over holiday from one year to the next.

Notice requirements

Generally employers can tell their employees when holiday should (or should not) be taken.

You must give your employer notice of the days you wish to take as holiday. If you have an agreement with your employer concerning the amount of notice you need to give, then that agreement will apply. If you don't have any agreement, then under the Regulations the period of notice which you give must be twice as long as the period of holiday which you wish to take. Your employer can refuse you permission to take the holiday requested. If so, your employer should notify you within a period of time equivalent to the amount of holiday which you wish to take.

Example 1: If you work 5 days a week and want to go on holiday for a week starting on 31 January, you must tell your employer 10 days before ie. on 21 January. If your employer wants to refuse you leave s/he must do so by 26 January.

Example 2: If you work 8 hours over two days a week and want a week's holiday, you must tell your employer 4 days before. Your employer has 2 days to refuse you leave.

What about bank holidays?

There is still no statutory right to paid time off on bank holidays, although you may have rights under your contract of employment. If your contract says you are entitled to paid time off on bank holidays, your employer must pay you for those days. However, your employer will be able to count such days as part of your minimum 4 weeks statutory paid holiday.

Holiday pay

The right is to paid holiday. You must be paid your normal weekly wage for the time you take off. If your hours and/or pay are irregular your employer must pay you an average week's pay, which is normally based on the 12 weeks prior to the leave period.

Written statement of terms and conditions

Your employer must give you a written statement of terms and conditions within two months of the start of your employment - see ERAS leaflet "**Your written statement of terms and conditions of employment**". This should include your entitlement to holidays.

Part-Timers

In general part-timers should enjoy the same rights to holidays as full-timers, although their entitlement may be reduced in proportion to the hours which they work.

Where employers treat part-timers less favourably (for example on bank holidays), part-timers may be able to rely on the *Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000*. These regulations prevent part-timers from being treated less favourably than full-timers, so part-timers can use them to argue that they should receive to receive the same holidays (including bank holidays) as full-timers, calculated in proportion to the hours which they work.

Remedies

Before taking any action to assert your rights to paid holidays, it is advisable to approach your employer, if possible.

If this approach does not work and your employer:

- refuses to let you take holidays or fails to pay you all or some of your pay for holidays
- reduces your hours or your pay as a result of having to give you paid holidays; or
- dismisses you for insisting on your right to a paid holiday,

you can make a complaint to an Employment Tribunal to that effect. There is a three month time limit for making a claim. The tribunal can make a declaration, if appropriate, and award compensation.

If you are in any doubt about your rights or the action to take, you should see a solicitor, or seek advice from ERAS, your local Law Centre, Citizens Advice Bureau, or other independent advice centre.

For further details contact:

Employment Rights Advice Service (ERAS)
Low Pay Unit
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Advice line: 020 7387 2522

www.lowpayunit.org.uk

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